

UNITED STATES DISTRICT COURT

for the

EASTERN DISTRICT OF MICHIGAN

United States of America

v.

NICHOLAS JOSEPH CYMES

Defendant

Case No. 09-30420

DETENTION ORDER PENDING TRIAL

After conducting a detention hearing under the Bail Reform Act, 18 U.S.C. § 3142(f), I conclude that these facts require that the defendant be detained pending trial.

Part I—Findings of Fact

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. § 3142(f)(1) and has previously been convicted of ☐ a federal offense ☐ a state or local offense that would have been a federal offense if federal jurisdiction had existed - that is
- ☐ a crime of violence as defined in 18 U.S.C. § 3156(a)(4) or an offense listed in 18 U.S.C. § 2332b(g)(5) for which the prison term is 10 years or more.
- ☐ an offense for which the maximum sentence is death or life imprisonment.
- ☐ an offense for which a maximum prison term of ten years or more is prescribed in _____ .*
- ☐ a felony committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. § 3142(f)(1)(A)-(C), or comparable state or local offenses:
- ☐ any felony that is not a crime of violence but involves:
- ☐ a minor victim
- ☐ the possession or use of a firearm or destructive device or any other dangerous weapon
- ☐ a failure to register under 18 U.S.C. § 2250
- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state release or local offense.
- ☐ (3) A period of less than five years has elapsed since the ☐ date of conviction ☐ the defendant's release from prison for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition will reasonably assure the safety of another person or the community. I further find that the defendant has not rebutted this presumption.

Alternative Findings (A)

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum prison term of ten years or more is prescribed in _____ .
- ☐ under 18 U.S.C. § 924(c).

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- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition will reasonably assure the defendant's appearance and the safety of the community.

Alternative Findings (B)

- ☐ (1) There is a serious risk that the defendant will not appear.
- ☒ (2) There is a serious risk that the defendant will endanger the safety of another person or the community.

Part II—Statement of the Reasons for Detention

I find that the testimony and information submitted at the detention hearing establishes by ☒ clear and convincing evidence ☐ a preponderance of the evidence that no condition or combination of conditions will reasonably assure the safety of other persons and the community. **See Attached.**

Part III—Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or a designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or held in custody pending appeal. The defendant must be afforded a reasonable opportunity to consult privately with defense counsel. On order of United States Court or on request of an attorney for the Government, the person in charge of the corrections facility must deliver the defendant to the United States marshal for a court appearance.

Date: October 13, 2009

S/ Sean F. Cox

Judge's SignatureSEAN F. COX, U.S. DISTRICT JUDGEName and Title

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No condition or combination of conditions will reasonably assure the safety of other persons and the community in that:

- 1) Defendant has admitted to engaging in oral sex with a two-year child on two occasions, and at least one of those incidents occurred while Defendant was in his mother's home and the child's father was present in the home;
- 2) Defendant has currently expressed having a "crush" on a fourteen year old child;
- 3) Defendant previously requested that a female friend bring a three-year old child to his home, for what she understood to be for sexual acts;
- 4) Despite the fact that a search warrant was executed at his home in August of 2009, resulting in the seizure of thousands of sexually explicit images and/or videos depicting real children of ages ranging from one to eight years of age, at the time of his arrest on Friday, October 9, 2009, the arresting agents seized additional child pornography that Defendant continued to collect after the search;
- 5) Defendant's mother works outside of the home four days per week and thus Defendant would be unsupervised for significant periods of time if he were tethered and ordered confined to his mother's home; and
- 6) Defendant's mother's home is located near schools and a bus stop.